

House Bill 508

By: Representative Mitchell of the 88th

A BILL TO BE ENTITLED
AN ACT

1 To establish the "Stop Mortgage Foreclosure Rescue Fraud Act of 2009"; to amend Article
2 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to
3 foreclosure, so as to provide for homeowner relief from unfair practices related to foreclosure
4 and foreclosure rescue schemes; to provide for monetary penalties; to provide for legislative
5 findings and intent; to provide for related matters; to provide for an effective date and
6 applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 The Legislature finds that homeowners who are in default on their mortgages, in foreclosure,
10 or at risk of losing their homes due to nonpayment of taxes may be vulnerable to fraud,
11 deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers. The
12 intent of this Act is to provide a homeowner with information necessary to make an informed
13 decision regarding the sale or transfer of his or her home to an equity purchaser. It is the
14 further intent of this section to require that foreclosure-related rescue services agreements be
15 expressed in writing in order to safeguard homeowners against deceit and financial hardship;
16 to ensure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure
17 or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair
18 contract terms; to afford homeowners a reasonable and meaningful opportunity to rescind
19 sales to equity purchasers; and to preserve and protect home equity for the homeowners of
20 this state.

21 **SECTION 2.**

22 This act shall be known and may be cited as the "Stop Mortgage Foreclosure Rescue Fraud
23 Act of 2009."

SECTION 3.

Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to foreclosure, is amended by adding a new part as follows:

"Part 5

44-14-310.

(a) As used in this part, the term:

(1) 'Equity purchaser' means any person who acquires a legal, equitable, or beneficial ownership interest in any residential real property as a result of a foreclosure-rescue transaction. The term does not apply to a person who acquires the legal, equitable, or beneficial interest in such property:

(A) By a certificate of title from a foreclosure sale;

(B) At a sale of property authorized by statute;

(C) By order or judgment of any court;

(D) From a spouse, parent, grandparent, child, grandchild, or sibling of the person or the person's spouse; or

(E) As a deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.

(2) 'Foreclosure-rescue consultant' means a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services.

The term does not apply to:

(A) A person acting under the express authority or written approval of the United States Department of Housing and Urban Development or other department or agency of the United States or this state to provide foreclosure-related rescue services.

(B) A charitable, nonprofit agency or organization, as determined by the United States Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, which offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for profit lender or person facilitating or engaging in foreclosure-rescue transactions.

(C) A person who holds or is owed an obligation secured by a lien or other instrument against residential real property in foreclosure if the person performs foreclosure-related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure reconveyance or foreclosure-rescue transaction.

(D) A financial institution and any parent or subsidiary of the financial institution or of the parent or subsidiary as such terms are defined in Code Section 7-1-4.

(E) A licensed mortgage broker, mortgage lender, or correspondent mortgage lender that provides mortgage counseling or advice regarding residential real property in foreclosure, which counseling or advice is provided without payment of money or other consideration other than a mortgage brokerage commission.

(3) 'Foreclosure-related rescue services' means any good or service related to, or promising assistance in connection with:

(A) Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or

(B) Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

(4) 'Foreclosure-rescue transaction' means a transaction:

(A) By which residential real property in foreclosure is conveyed to an equity purchaser and the homeowner maintains a legal or equitable interest in the residential real property conveyed, including, without limitation, a lease option interest, an option to acquire the property, an interest as beneficiary or trustee to a land trust, or other interest in the property conveyed; and

(B) That is designed or intended by the parties to stop, avoid, or delay foreclosure proceedings against a homeowner's residential real property.

(5) 'Homeowner' means any record title owner of residential real property that is the subject of foreclosure proceedings.

(6) 'Residential real property' means real property consisting of one-family to four-family dwelling units, one of which is occupied by the owner as his or her principal place of residence.

(7) 'Residential real property in foreclosure' means residential real property against which there is an outstanding notice of the pendency of foreclosure proceedings properly filed and recorded.

44-14-311.

In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

(a) Engage in or initiate foreclosure-related rescue services without first executing a written agreement with the homeowner for foreclosure-related rescue services; or

(b) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services contained in the agreement for foreclosure-related rescue services.

44-14-312.

(a) Foreclosure-related rescue services shall only be provided pursuant to a written agreement. The written agreement for foreclosure-related rescue services must be printed in at least 12 point uppercase font, except where 14 point font is required by this Code Section, and signed by both parties. The agreement must include the name and address of the person providing foreclosure-related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services, and the date of the agreement. The date of the agreement may not be earlier than the date the homeowner signed the agreement. The foreclosure-rescue consultant must give the homeowner a copy of the agreement to review not less than one business day before the homeowner is to sign the agreement.

(b) The homeowner has the right to cancel the written agreement without any penalty or obligation if the homeowner cancels the agreement within three business days after signing the written agreement. The right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant. If the homeowner cancels the agreement, any payments that have been given to the foreclosure-rescue consultant must be returned to the homeowner within ten business days after receipt of the notice of cancellation.

(c) An agreement for foreclosure-related rescue services must contain, immediately above the signature line, a statement in capital letters in at least 14 point font that substantially complies with the following:

'HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.

THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN TEN BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED

128 (POSTMARKED) OR DELIVERED TO (NAME) AT(ADDRESS) NO
129 LATER THAN MIDNIGHT OF(DATE).

130 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR
131 MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR
132 MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR
133 A RESTRUCTURING WITH YOU FREE OF CHARGE.'

134 (d) The inclusion of the statement does not prohibit the foreclosure-rescue consultant from
135 giving the homeowner more time in which to cancel the agreement than is set forth in the
136 statement, provided all other requirements of this subsection are met.

137 (e) The foreclosure-rescue consultant must give the homeowner a copy of the signed
138 agreement within three hours after the homeowner signs the agreement.

139 44-14-313.

140 (a) A foreclosure-rescue transaction must include a written agreement prepared in at least
141 12 point uppercase font, except where 14 point font is required by this Code Section, that
142 is completed, signed, and dated by the homeowner and the equity purchaser before
143 executing any instrument from the homeowner to the equity purchaser quitclaiming,
144 assigning, transferring, conveying, or encumbering an interest in the residential real
145 property in foreclosure. The equity purchaser must give the homeowner a copy of the
146 completed agreement within three hours after the homeowner signs the agreement. The
147 agreement must contain the entire understanding of the parties and must include:

148 (1) The name, business address, and telephone number of the equity purchaser.

149 (2) The street address and full legal description of the property.

150 (3) Clear and conspicuous disclosure of any financial or legal obligations of the
151 homeowner that will be assumed by the equity purchaser.

152 (4) The total consideration to be paid by the equity purchaser in connection with or
153 incident to the acquisition of the property by the equity purchaser.

154 (5) The terms of payment or other consideration, including, but not limited to, any
155 services that the equity purchaser represents will be performed for the homeowner before
156 or after the sale.

157 (6) The date and time when possession of the property is to be transferred to the equity
158 purchaser.

159 (b) A foreclosure-rescue transaction agreement must contain, above the signature line, and
160 above the name and signature of the purchasing party or parties, a statement in capital
161 letters in at least 14 point font that substantially complies with the following:

'I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME
TO THE UNDERSIGNED PARTY.'

(c) A foreclosure-rescue transaction agreement must state the specifications of any option
or right to repurchase the residential real property in foreclosure, including the specific
amounts of any escrow payments or deposit, down payment, purchase price, closing costs,
commissions, or other fees or costs.

(d) A foreclosure-rescue transaction agreement must comply with all applicable provisions
of 15 U.S.C. ss. 1600 et seq. and related regulations.

(e) The homeowner may cancel the foreclosure-rescue transaction agreement without
penalty if the homeowner notifies the equity purchaser of such cancellation no later than
5 P.M. on the third business day after signing the written agreement. Any moneys paid by
the equity purchaser to the homeowner or by the homeowner to the equity purchaser must
be returned at cancellation. The right to cancel does not limit or otherwise affect the
homeowner's right to cancel the transaction under any other law. The right to cancel may
not be waived by the homeowner or limited in any way by the equity purchaser. The
equity purchaser must give the homeowner, at the time the written agreement is signed, a
notice of the homeowner's right to cancel the foreclosure-rescue transaction as set forth in
this subsection. The notice, which must be set forth on a separate cover sheet to the written
agreement that contains no other written or pictorial material, must be in capital letters in
at least 14 point font, double-spaced, and read as follows:

'NOTICE TO THE HOMEOWNER/SELLER

PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY
CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE THIRD
BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY YOU
OR BY THE PURCHASER.

ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE
RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY
YOU TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

193 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY 5:00
194 P.M. ON(DATE) AT (ADDRESS). IT IS BEST TO MAIL IT BY
195 CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT REQUESTED,
196 AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR POST OFFICE
197 RECEIPT.

198 I (we) hereby cancel this transaction.

199seller's signature

200 seller's name

201 date'

202 44-14-314.

203 (a) In any foreclosure-rescue transaction in which the homeowner is provided the right to
204 repurchase the residential real property, the homeowner has a 30 day right to cure any
205 default of the terms of the contract with the equity purchaser, and this right to cure may be
206 exercised on up to three separate occasions. The homeowner's right to cure must be
207 included in any written agreement required by this subsection.

208 (b) In any foreclosure-rescue transaction, before or at the time of conveyance, the equity
209 purchaser must fully assume or discharge any lien in foreclosure as well as any prior liens
210 that will not be extinguished by the foreclosure.

211 (c) If the homeowner has the right to repurchase the residential real property, the equity
212 purchaser must verify and be able to demonstrate that the homeowner has or will have a
213 reasonable ability to make the required payments to exercise the option to repurchase under
214 the written agreement. For purposes of this subsection, there is a rebuttable presumption
215 that the homeowner has a reasonable ability to make the payments required to repurchase
216 the property if the homeowner's monthly payments for primary housing expenses and
217 regular monthly principal and interest payments on other personal debt do not exceed 60
218 percent of the homeowner's monthly gross income.

219 (d) If the homeowner has the right to repurchase the residential real property, the price the
220 homeowner pays may not be unconscionable, unfair, or commercially unreasonable. A
221 rebuttable presumption, solely between the equity purchaser and the homeowner, arises that
222 the foreclosure-rescue transaction was unconscionable if the homeowner's repurchase price
223 is greater than 17 percent per annum more than the total amount paid by the equity
224 purchaser to acquire, improve, maintain, and hold the property. Unless the record provided

225 by this part is properly filed and recorded, the presumption arising under this subsection
226 shall not apply against creditors or purchasers for a valuable consideration and without
227 notice.

228 44-14-315.

229 Any foreclosure-rescue transaction involving a lease option or other repurchase agreement
230 creates a rebuttable presumption, solely between the equity purchaser and the homeowner,
231 that the transaction is a loan transaction and the conveyance from the homeowner to the
232 equity purchaser is a mortgage. Unless the lease option or other repurchase agreement, or
233 a memorandum of the lease option or other repurchase agreement, is properly filed and
234 recorded, the presumption created under this subsection shall not apply against creditors
235 or subsequent purchasers for a valuable consideration and without notice.

236 44-14-316.

237 A person who violates any provision of this section commits an unfair and deceptive trade
238 practice. Violators are subject to the penalties and remedies provided for in Part 2 of
239 Article 15 of Chapter 1 of Title 10, relating to the 'Fair Business Practices Act,' and in
240 addition may be subject to a monetary penalty not to exceed \$30,000.00 per violation.

241 **SECTION 4.**

242 This Act shall become effective on July 1, 2009, and shall apply to agreements entered into
243 on or after such date.

244 **SECTION 5.**

245 All laws and parts of laws in conflict with this Act are repealed.